

REMARKS/ARGUMENTS

Applicant respectfully requests reconsideration of the present application in view of the following remarks, which are responsive to the non-final Office Action mailed April 6, 2010.

I. Status of the Claims

In the Office Action, Claims 1, 4-7, 12, 16-22, and 26-27 were noted as pending in the application, and all claims were rejected. Claims 1, 22, and 26-27 have been amended to further clarify the claimed invention over the cited references. As a result of this response, Claims 1, 4-7, 12, 16-22, and 26-27 remain pending.

II. Claim Rejections

In the Office Action, Claims 1, 4, 16, 19, 22, and 26 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,366,930 to Gutman et al. (*Gutman*). Additionally, Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Gutman* in view of Official Notice. Finally, Claims 5-7, 17-18, 20-21, and 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Gutman* in view of U.S. Patent No. 5,619,650 to Bach et al. (*Bach*). For at least the following reasons, Applicant respectfully requests that the rejections of Claims 1, 4-7, 12, 16-22, and 26-27 be withdrawn.

As discussed above, the Office Action rejected independent Claims 1, 4, 16, 19, 22, and 26 as being anticipated by *Gutman*. Independent Claims 1, 4, 16, 19, 22, and 26 each recite, in somewhat different language, a data throttle limiting the transfer rate of data from a first host to a second host where the throttle value is less than or equal to the least of a first data transfer rate of the first host, a second data transfer rate of the second host, **and a third data transfer rate of a network between the first and second hosts**. Applicant respectfully submits that *Gutman* at least fails to disclose this recitation of the independent claims for various reasons that will be explained in greater detail below.

Gutman appears to disclose a method for establishing an Ethernet link between two devices based on a power-related configuration (*Gutman*, col. 1, lines 56-59). In particular, *Gutman* describes the use of additional initial and preferred common link speed fields that are saved in the device configuration information (*id.*, col. 2, line 60 - col. 3, line 1). The initial or preferred common link speed may be less than another link speed supported by the first device (*id.*, col. 3, lines 31-33). When seeking a connection to a second device during a power-saving mode, the first device may only advertise the lesser initial or preferred common link speed in an attempt to negotiate a connection with the second device at that lower link speed (*id.*, col. 3, lines 50-55).

The method described by *Gutman*, however, fails to even consider the data transfer rate of the network between the first and second device. Much less does *Gutman* disclose a data throttle limiting the transfer rate of data from a first device to a second device where the throttle value is less than or equal to the least of a first data transfer rate of the first device, a second data transfer rate of the second device, and a third data transfer rate of a network between the first and second devices. The Office Action cites portions of *Gutman* that make no mention whatsoever of the transfer speed of the network between the first and second devices. In fact, the Office Action cites a portion of Claim 1 of *Gutman*, which recites:

1. A method comprising:
 - determining a first plurality of connection speeds **associated with a first device;**
 - determining a second plurality of connection speeds **associated with a second device;**
 - determining a **slowest common link speed of the first plurality of connection speeds and the second plurality of connection speeds;**
 - negotiating an Ethernet link at the slowest common link speed; ...

The connection link speed is clearly determined based solely on the connection speeds of the first and second devices. At no point is the data transfer rate of the network between the two devices even discussed let alone considered as a factor in the determination of the link speed of the connection. It follows that since such a network data transfer rate is never described or

considered, *Gutman* does not disclose using a network data transfer rate to determine a throttle value at a first host.

Based on the foregoing arguments, Applicant respectfully asserts that *Gutman* does not teach or suggest all of the recitations of independent Claims 1, 4, 16, 19, 22, and 26 and respectfully requests that the rejection of these claims be withdrawn. Moreover, dependent claims 5-7, 12, 17-18, 20-21, and 27 are therefore also patentable over any combination of the cited references at least due to their dependency from allowable independent base Claims 1, 4, 16, 19, 22, and 26.

Furthermore, the teachings of *Bach* do not cure the above-referenced deficiencies of *Gutman*, and indeed are not cited as such. In fact, the Examiner only cites *Bach* for teachings related to various protocol layers. Thus, the combination of *Gutman* and *Bach* does not teach all of the recitations of any of the currently pending claims.

To the extent these rejections are premised upon Official Notice, such reliance is seasonably challenged and the Examiner is respectfully requested to identify and cite to a reference if these rejections are to be maintained.

III. Conclusion

In light of the remarks above, Applicant respectfully submits that the application is in condition for allowance and respectfully requests that a Notice of Allowance be issued. The Examiner is encouraged to contact Applicant's undersigned attorney to resolve any remaining issues in order to expedite examination of the present application.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefor (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,

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